

## **REMARKS**

This Substitute Response is filed to correct the first paragraph under the heading Response. No other changes have been made.

Claims 1 and 26 (and all depending) have been rejected under 35 USC § 112 in view of certain language contained therein. By the above amendments to Claims 1 and 26, it is believed that any indefiniteness has been removed and that the claims particularly point out and distinctly claim the invention. Withdrawal of the rejection under 35 USC § 112 is respectfully requested.

Claims 1-9, and 17-18 have been rejected as reciting subject matter obvious over certain teachings contained in the Gravier patent in view of the Greenberg ('567) patent. In particular, the Examiner contends that Elements 14 and 15 in the Gravier patent correspond with the recitation of a lintel. Before addressing this issue, it may be well to point out that in the Preamble of the independent Claim 1 (from which Claims 2-9 and 17, 18 depend) the wall structure is recited as being an "above ground wall." By this it is meant, and as set forth more particularly in the specification, that the wall extending between supporting posts is or can be above ground. Elements 14 and 15 in Gravier upon which the Examiner relies for support that they are equivalent to the recited lintel, are defined as "fence block arrays." On page 854 of the McGraw-Hill Dictionary of Scientific and Technical Terms (copy enclosed), the term 'lintel' is defined as "a horizontal member over an opening, such as a door or window, usually carrying the wall

load.” The “fence block arrays” of Gravier do not meet this definition. One must therefore come to the inescapable conclusion that the applied prior art is insufficient to support or warrant a rejection under 35 USC § 103.

Withdrawal of the rejection of Claim 1, along with withdrawal of the rejection of Claims 2-9 and 17-18 depending therefrom is respectfully requested.

Claims 7-9 have been rejected as reciting subject matter obvious over certain teachings contained in the Gravier and Greenberg patents. In view of further teachings contained in the Wallin patent. In particular, the Examiner contends that the C-shaped lintel of Wallin could be substituted for the “fence block arrays” of Gravier and with such substitution, the subject matter recited in Claim 7 would result. For reasons set forth above, the fence block arrays of Gravier do not meet the technical definition of a lintel as recited in Claim 1.

Considering the unique configuration of Blocks 27 forming a part of the fence block array, and the specific purposes and results achieved from such configuration, there would appear to exist no justification for the assumption that one skilled in the art would have any inventive whatsoever to substitute the Wallin C-shaped lintel for these specifically configured blocks. Accordingly, it is believed that the rejection of Claim 7 is specious and unwarranted. Withdrawal of the rejection of Claim 7 and Claims 8 and 9 depending therefrom is respectfully requested.

Claims 23-25 have been rejected as reciting the subject matter obvious over certain teachings contained in the Gravier patent in view of further teachings contained in the Greenberg ('567) patent, as applied to Claims 1-9 and 17-18. In support of this rejection, the Examiner contends that these claims “merely recite the obvious method of forming the wall structure as recited in Claims 1-9 and 17-18. First, the fact that method claims recite a method for building a structure recited in apparatus claims is not fatal in and of itself. Second and as set forth above, there is no teaching of a lintel in the applied Gravier and Greenberg patents to support an above ground wall. Step (e) of Claim 23 is directed to the placing of a lintel on each of the recited plates to locate the ends of the lintel in slots of the respective posts above ground for supporting a wall section is not taught in the applied patents. Thus, this step recites an aspect of forming a wall which is not taught in the applied prior art.

Withdrawal of the rejection of Claim 23 based upon obviousness is therefore respectfully requested. As Claim 23 recites allowable subject matter, the further steps recited Claims 24 and 25 depending from Claim 23, similarly recite allowable subject matter.

Claims 26-31 have been rejected as reciting subject matter obvious over certain teachings contained in the Gravier and Greenberg '567 patents. As set forth in detail above, Gravier does not teach the use of a lintel as defined in the McGraw-Hill

Dictionary of Scientific and Technical Terms. Without such teaching in the applied prior art, this rejection fails. Accordingly, it is respectfully requested that Claim 26 be allowed and that Claims 27-31, depending directly or indirectly therefrom be allowed.

Claims 29-31 are method claims that have been rejected as reciting subject matter obvious over certain teachings contained in the Gravier and Greenberg '567 patents in view of further teachings contained in the Wallin patent. The Examiner contends that both the Gravier and Greenberg patents teach the use of a lintel.

There is no such teaching in the Greenberg '567 patent and for reasons set forth above, the Gravier patent also fails to provide such teaching. The Wallin patent is directed to a modular wall system having a plurality of panels. It is not directed to a wall formed of courses of blocks or bricks. According, the considerations attendant construction of a wall formed from a plurality of aligned panels are very different to a mason or brick layer from a wall formed by a plurality of courses of blocks or bricks. These two types of walls not only have different structural elements, but serve very different purposes. In particular, as noted in Wallin, the vertical wall panels are used to hold back (provide support for) filled dirt on one side of the wall. Thereby, the lateral forces imposed upon the wall are particularly well countered by vertical wall panels as opposed to courses of blocks or bricks unless suitably reinforced. It may also be pointed out that the bottom of the Wallin wall is not above ground, as recited in these rejected claims. In fact, the Wallin wall cannot be above ground in order to serve its intended

purpose.

In view of these considerations negating obviousness, it is respectfully requested that the rejection of Claims 29-31 be withdrawn.

Claims 32-35 are method claims and have been rejected as reciting subject matter obvious over certain teachings contained in the Gravier and Greenberg '567 patents. In particular, the Examiner contends that the recited steps recite nothing more than the formation of the wall set forth in remaining Claims 1-31.

First of all, it is not appropriate to reject a method claim in the basis that it recites a method for constructing the apparatus recited in a corresponding apparatus claim.

Second, the obviousness of method claim is a function of the prior art other than the applicants disclosure in the specification and drawings.

Third, for reasons set forth above, the Gravier patent does not teach a lintel. Accordingly, Claim (d) of Claim 32 reciting the step of locating a lintel is not and cannot be found in the applied prior art.

Fourth, Paragraph (f) of Claim 32 recites the step of installing a plurality of tensioning the rods extending from within the lintel upward into the wall in conjunction with exercise of the step of laying. This step cannot be carried out by either the structure set forth in the Gravier patent or the Greenberg patent. Even if, as the Examiner alleges, that Gravier teaches a lintel, the structure of the fence block arrays, as set forth, prevent

the exercise of step (f).

One must therefore come to the inescapable conclusion that Claim 32 recites a method neither taught in nor obvious over any combination of teachings contained in the Gravier and Greenberg patents. Allowance of Claim 32, along with allowance of Claims 33-35 depending therefrom is respectfully requested.

In view of the amendments to the claims to more particularly point out and distinctly claim the invention, the detailed review of each rejection and the correlation of the attendant recited prior art with the language in the corresponding claims, it is believed that all of the rejections based upon obviousness must be withdrawn. With such withdrawal, along with withdrawal of the rejection under 35 USC § 112, it is believed that the application is in condition for allowance, which allowance is respectfully requested.

Respectfully Submitted,

CAHILL, VON HELLENS & GLAZER P.L.C.

**/C. Robert von Hellens/**

C. Robert von Hellens  
Reg. No. 25,714

155 Park One  
2141 E. Highland Avenue  
Phoenix, Arizona 85016  
(602) 956-7000  
A-6RespSubstitute-07Aug3003.wpd